FILE COPY

Office Supreme Court, U. S.
FILED.
NOV 14 1906
JAMES H. McKENNEY,
CLERK.

No. 481.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

ADDISON JOHNSON, AGENT AND WARDEN OF SING SING PRISON, APPELLANT,

v.

CHARLES C. BROWNE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

ADDISON JOHNSON, AGENT AND WARDEN of Sing Sing Prison, appellant,
v.
CHARLES C. BROWNE.

No. 481.

MOTION TO ADVANCE.

Comes now the Solicitor-General, and moves to advance the above-entitled cause for hearing during the present term at the earliest date convenient to the court.

This is a habeas corpus proceeding arising out of a criminal case and involves a most important question relating to the law of extradition; one which has never heretofore been past upon by this court.

STATEMENT.

In the spring of 1902 it was disclosed by investigation that extensive frauds had been practised at the port of New York in the importation and entry of Japanese silks. The parties implicated were an importing firm known as A. S. Rosenthal & Co. and an examiner of silks in the appraisers' department at the port of New York, named Charles C.

13041—06

Browne, the appellee here. The frauds consisted of the presentation for customs purposes of invoices made out in Japan, wherein the weight of the silks was falsely and fraudulently understated, and the certification by Browne (whose duty it was to examine and report as to the correctness of the invoices by comparing them with the goods themselves sent to the public stores for examination by him) that these false and fraudulent invoices were correct.

In the spring of 1903 the grand jury of the United States Circuit Court for the Southern District of New York filed two indictments against the respondent Browne. In one of these, under section 5440, Revised Statutes, he was jointly indicted with the two importers, A. S. Rosenthal and Martin L. Cohn (composing the firm of A. S. Rosenthal & Co.), for conspiring to defraud the United States. In the other indictment Browne alone was charged under section 5444 of the Revised Statutes with knowingly aiding in attempting to enter Japanese silks upon payment of less than the amount of duty legally due thereon.

In January, 1904, the conspiracy indictment was brought to trial. The defendant Rosenthal had absconded and did not appear and is now a fugitive from justice. The trial proceeded against the other two defendants, and Browne was found guilty and was sentenced to two years at hard labor in Sing Sing Prison.

An appeal was prosecuted on behalf of Browne to the United States Circuit Court of Appeals where his conviction was affirmed. An application was thereupon made to this court for a writ of certiorari, which, on the 15th day of January, 1906, was denied. Four days later, on the 19th of January, 1906, Browne was called in the Circuit Court to submit himself for the execution of the sentence, and failed to respond. A few days later it was discovered he had fled to Canada.

The Government instituted proceedings in Montreal to have Browne extradited under subdv. 4, art. 1, of the extradition treaty between the United States and Canada, which provides for fraud committed by an agent as one of the grounds of extradition. After various hearings the extradition commissioner held Browne for extradition, but on a writ of habeas corpus the Court of Kings Bench decided that the crime of conspiring to defraud, of which he had been convicted, was not fraud within the meaning of the section of the treaty above referred to, and ordered his discharge.

The United States Government immediately caused the rearrest of Browne on a new complaint, charging him with the offenses for which he had been indicted under section 5444 of the Revised Statutes in 1903, and for which offenses he had not been tried in New York. This second proceeding resulted in his being held for extradition by the commissioner, and upon writ of habeas corpus

the Court of Kings Bench decided that a case for extradition had been made out, and ordered his surrender to the United States authorities.

Browne was brought from Montreal by an officer of the United States deputed for that purpose, and when the train on which he was a passenger arrived within the Southern District of New York he was surrendered by the officer who had brought him to the marshal of the United States for the Southern District of New York, the proper custodian for his reception. The said marshal having in his hands the unexecuted process of the United States Circuit Court for the Southern District of New York, by which Browne had been ordered to serve a term of two years in Sing Sing Prison, proceeded to deliver him into the custody of the warden of Sing Sing Prison. Browne thereupon sued out a writ of habeas corpus in the United States Circuit Court for the Southern District of New York, claiming that his imprisonment for a crime of which he had been convicted before his flight, and a different crime from that upon which his extradition had been ordered, was in violation of the third article of the extradition treaty between the United States and Great Britain. Upon the return day named in the writ the warden of Sing Sing prison made return to the writ, setting forth that he held Browne under an order of the United States Circuit Court for the Southern District of New York, sentencing him to serve a term of two years at hard labor at Sing Sing

prison. The facts in the case were in no wise disputed. After hearing argument, Judge Hough, United States district judge sitting in the Circuit Court, decided that Browne's imprisonment was illegal and in violation of the terms of the extradition treaty and directed his release. An order to that effect was entered, and from that order the present appeal is prosecuted by the United States.

Treaty provisions to be considered.

The following provisions of the extradition convention between the United States and Great Britain, concluded July 12, 1889, proclaimed March 25, 1890 (26 U. S. Stat. at Large, 1508), will require the construction of the court:

> ART. 2. No person surrendered by either of the high contracting parties to the other *shall be triable or be tried* OR BE PUNISHED for any political crime or offense, or for any act connected therewith committed previously to his extradition.
>
> ART. 3. No person surrendered by or to either of the high contracting parties shall *be triable or be tried* for any crime or offense committed prior to his extradition other than the offense for which he was surrendered, until he shall have had an opportunity of returning to the country from which he has been surrendered.
>
> ART. 7. The provisions * * * of this convention shall apply to persons convicted of the crimes therein respectively named and specified, whose sentence shall not have been executed.

Precise question involved.

The question to be determined by the court is whether there is anything in the treaty provisions above cited, or in the decisions of this court, which permits or requires that a person duly convicted in the courts of the United States of a nonpolitical offense, and sentenced to imprisonment therefor before his flight, shall be allowed to go at large within the United States and within the district in which he was sentenced, because he has been extradited from Great Britain or Canada for another offense for which he has not yet been tried.

Or, to put it in another form, does the fact that a person has been extradited from Great Britain or Canada for an offense for which he has not yet been tried, estop a court of the United States from enforcing its judgment of imprisonment against such person for an offense of which he was duly convicted, and for which he was sentenced to imprisonment before his flight from the United States?

Reasons for advancement.

It will be seen at once that the question involved, as above stated, is of the highest importance. It has never been past upon in this court, or, so far as investigation has disclosed, in any court of the United States, except in a case in the Circuit Court of the United States for the Western District of Pennsylvania, decided not only before the adoption of the present extradition convention, but before the decision of this court in the case of *U. S.* v. *Rauscher* (119 U. S., 407). The question is one lia-

ble to occur at any time. The proximity of Canada and the facilities for crossing the boundary are such that persons convicted of crimes in the United States who have been out on bail pending appeal are likely to take refuge there at any time, *and as matter of fact, instances of this character are numerous and frequent.* The decision of this court in the *Rauscher* case rendered twenty years ago has been the subject of widely different interpretations in the State and Federal courts, and it is highly important that an authoritative pronouncement of this court shall be obtained as to the extent to which the doctrines laid down therein shall be carried, in view of special provisions since incorporated in treaties between the United States and various foreign countries.

Instances are liable to occur at any time of the discovery, after persons have been extradited, of the fact that they have been convicted and sentenced for other offenses prior to their extradition or to their flight. An instance is liable to occur at any time of a person who has been extradited for a minor crime being found, after extradition, to be the same person who prior to his extradition and flight had been convicted of a far graver crime. If the opinion of the Circuit Court in this case is to stand as the law no court of the United States or of a State can enforce its sentence against any person who may have been extradited for some other offense without giving him an opportunity to again take refuge in the foreign country from which he was extradited.

In the case at bar the respondent, having since his extradition given bail to appear for trial on the charge for which he was extradited, is now at large in the Southern District of New York, notwithstanding he has never served his sentence for conspiring to defraud the United States. Such a spectacle is unseemly and tends to bring the administration of the criminal laws into disrepute, and it would seem no argument is required on the proposition that a decision of this court should be obtained at the earliest practicable moment in order that, if the decision of the court below should be sustained here, it may be open to the executive branch of the Government to take such steps in the direction of amending extradition treaties as may be necessary to prevent the future recurrence of such anomalous conditions.

The trial of the respondent for conspiracy in January, 1904, consumed nearly a month and involved the Government in great expense. It is respectfully suggested that the Government is entitled to know whether all this time and expense is to go for nothing; and the court which rendered the judgment is paralyzed from enforcing it, before setting in motion further proceedings against the petitioner upon the other pending charge.

HENRY M. HOYT,
Solicitor-General.
W. WICKHAM SMITH,
Special Assistant to the Attorney-General.

○